

## **2013 DRAFTING REQUEST**

### **Bill**

Received: **12/11/2012** Received By: **tdodge**  
Wanted: **As time permits** Same as LRB:  
For: **Legislative Council - JLC 266-1537** By/Representing: **David Lovell**  
May Contact: Drafter: **pkahler**  
Subject: **Insurance - other insurance** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **David.Lovell@legis.wisconsin.gov**  
Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Allowing American Indian tribes and bands to insure governmental facilities under the local government property insurance fund

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### **Instructions:**

WLC:0025/2

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 1/3/2013			_____			
/P1	pkahler 1/25/2013	jdye 1/9/2013	rschluet 1/9/2013	_____	sbasford 1/9/2013		
/P2	pkahler 2/4/2013	jdye 1/31/2013	jfrantze 2/1/2013	_____	mbarman 2/1/2013		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1		jdye 2/4/2013	phenry 2/4/2013	_____	sbasford 2/4/2013	lparisi 2/13/2013	

FE Sent For:

Not needed

&lt;END&gt;

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for Assembly  
Per David  
Lovell  
2-13-13

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1		jdye 2/4/2013	phenry 2/4/2013	_____ _____	sbasford 2/4/2013		

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May Contact: Drafter: pkahler  
Subject: Insurance - other insurance Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: David.Lovell@legis.wisconsin.gov  
Carbon copy (CC) to: pam.kahler@legis.wisconsin.gov  
tamara.dodge@legis.wisconsin.gov

### Pre Topic:

No specific pre topic given

### Topic:

Allowing American Indian tribes and bands to insure governmental facilities under the local government property insurance fund

### Instructions:

WLC:0025/2

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/?	tdodge 1/3/2013	P2 3/31 ju	2/1	R32/1			
/P1	pkahler 1/7/2013	jdye 1/9/2013	rschluet 1/9/2013		sbasford 1/9/2013		

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<END>

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 Carbon copy (CC) to: **pam.kahler@legis.wisconsin.gov**  
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1/?	tdodge	PI	9 jld	dm 11/21/13 LC Conversion	3		
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FE Sent For:

<END>



DLL:jal;

11/19/2012

1     **AN ACT** *to renumber 605.09; to renumber and amend 605.02 (1) and 605.21 (2); to*  
2     *amend 605.02 (2) (intro.) and (a) to (c), 605.21 (1), 605.21 (3), 605.21 (4), 605.23*  
3     *(1) and (2) and 605.24 (3); and to create 605.01 (3), 605.02 (1) (b), 605.09 (1) (title),*  
4     *605.09 (2), 605.21 (1m) and 605.21 (2) (c) of the statutes; relating to:* allowing  
5     American Indian tribes and bands to insure governmental facilities under the local  
6     government property insurance fund.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations at the recommendation of the office of the commissioner of insurance (OCI).

Currently, a local governmental unit (including general purpose and special purpose units of government) may insure its property in the local government property insurance fund (fund), administered by the OCI. The governing body of the governmental unit must adopt a resolution authorizing insurance of its property in the fund. With certain exceptions, a governmental unit that participates in the fund must insure all of its insurable property in the fund.

This draft allows American Indian tribes and bands in this state to insure their property in the fund under terms substantially similar to the terms that apply to local governmental units. It requires the governing body of a tribe to adopt a resolution authorizing the insurance and agreeing to abide by the rules and terms of the program and any policy issues to the tribe. It does not allow the insurance of tribal casinos or associated facilities in the fund.

7     **SECTION 1.** 605.01 (3) of the statutes is created to read:

8     605.01 (3) "Tribe" means a federally recognized American Indian tribe or band in this  
9     state.

10    **SECTION 2.** 605.02 (1) of the statutes is renumbered 605.02 (1) (a) and amended to read:

1           605.02 (1) (a) PROPERTY OF LOCAL GOVERNMENTAL UNITS AND TRIBES. Any Except as  
2 provided in par. (b). a local governmental unit or tribe may insure in the property fund its  
3 property or, subject to sub. (2), property for which it may be liable in the event of damage or  
4 destruction. Property insured under this section by a local governmental unit or tribe may not  
5 also be insured in any other manner unless the manager certifies that additional insurance is  
6 necessary, or unless the local governmental unit or tribe by resolution, a certified copy of  
7 which is filed with the manager, decides to insure specified personal property with insurers  
8 authorized to do business in this state.

9           SECTION 3. 605.02 (1) (b) of the statutes is created to read:

10           605.02 (1) (b) A tribe may not insure a building in which the tribe conducts class II  
11 gaming, as defined in 25 USC 2703 (7), or class III gaming, as defined in 25 USC 2703 (8),  
12 or a hotel, restaurant, convention center, or other facility attached to or associated with such  
13 a building.

14           SECTION 4. 605.02 (2) (intro.) and (a) to (c) of the statutes are amended to read:

15           605.02 (2) REQUIREMENTS FOR NONOWNED PROPERTY. (intro.) The property fund may  
16 cover a building or structure specified in sub. (1) that is not owned by a local governmental  
17 unit or tribe only if all of the following conditions are met:

18           (a) The building or structure is listed and described as a nonowned building or structure  
19 in the local governmental unit's or tribe's statement of values.

20           (b) The local governmental unit or tribe is contractually liable in the event that the  
21 building or structure is damaged or destroyed.

22           (c) The building or structure is in the local governmental unit's or tribe's care, custody,  
23 or control.

24           SECTION 5. 605.09 of the statutes is renumbered 605.09 (1).

1           **SECTION 6.** 605.09 (1) (title) of the statutes is created to read:

2           605.09 (1) (title) **PROPERTY OF LOCAL GOVERNMENTAL UNITS.**

3           **SECTION 7.** 605.09 (2) of the statutes is created to read:

4           605.09 (2) **PROPERTY OF TRIBES.** A policy issued to a tribe under this chapter shall be  
5 suspended, and no claim may be paid under the policy on any loss occurring during the period  
6 of suspension, if the tribe pays out any money to any private insurer or incurs any indebtedness  
7 against the tribe to a private insurer for any insurance on any property of the tribe or for which  
8 the tribe may be legally liable if such insurance is available under this chapter, unless one of  
9 the following applies:

10           (a) The insurance is approved by the commissioner as necessary.

11           (b) The insurance is on personal property that the tribe has decided, by resolution  
12 adopted by the governing body of the tribe, to insure and the tribe has notified the  
13 commissioner of its decision to insure the personal property.

14           (c) The insurance is on property described in s. 605.02 (1) (b).

15           **SECTION 8.** 605.21 (1) of the statutes is amended to read:

16           (1) (title) **PLACING INSURANCE; LOCAL GOVERNMENTAL UNITS.** The property fund shall  
17 insure property described in s. 605.02 for a local governmental unit after receipt from the clerk  
18 of the local governmental unit of a certified copy of the resolution authorizing insurance in  
19 the property fund. The clerk shall report to the manager each policy then in force upon such  
20 property, stating the property covered by the policy and the dates of issue and of expiration,  
21 the amounts and rates of insurance and the premiums. Property already insured shall become  
22 insured by the property fund as existing policies expire or are canceled. Thereafter the  
23 insurance on all property described in s. 605.02 shall be provided. Premiums shall be certified  
24 by the manager to the clerk of the appropriate unit.

1           **SECTION 9.** 605.21 (1m) of the statutes is created to read:

2           **605.21 (1m) PLACING INSURANCE; TRIBES.** (a) The property fund shall insure property  
3 described in s. 605.02 for a tribe after receipt from the tribe of a certified copy of a resolution  
4 of the tribe's governing body that does all of the following:

5           1. Authorizes insurance in the property fund.

6           2. States that the tribe agrees to abide by this chapter and the terms of a policy under  
7 this chapter and to comply with all directives of the manager and all decisions an umpire under  
8 s. 605.23 (2), to the same extent that a local governmental unit is required, and that the tribe  
9 will not raise the defense of sovereign immunity in any action in a court of competent  
10 jurisdiction to enforce this chapter, a policy under this chapter, a directive of the manager, or  
11 the decision of an umpire.

12           3. Designates an administrative officer of the tribe responsible for insurance under the  
13 property fund.

14           (b) The administrative officer designated in par. (a) 3. shall report to the manager each  
15 policy then in force upon such property, stating the property covered by the policy and the  
16 dates of issue and of expiration, the amounts and rates of insurance and the premiums.  
17 Property already insured shall become insured by the property fund as existing policies expire  
18 or are canceled. Thereafter, the insurance on all property described in s. 605.02 shall be  
19 provided. Premiums shall be certified by the manager to the clerk of the appropriate unit.

20           **SECTION 10.** 605.21 (2) of the statutes is renumbered 605.21 (2) (a) and amended to  
21 read:

22           **605.21 (2) (a)** Upon receipt of certification of premium due, the premium shall be paid  
23 into the state treasury for the benefit of the property fund, within 60 days after the date of  
24 certification or the effective date of the policy, whichever is the later. Premiums for property

1 insured effective at a later date shall be paid within 60 days after the effective date of each  
2 addition.

3 (b) The amount of a premium payable by a local governmental unit that is in default  
4 shall be a special charge against the local governing unit, and be included in the next  
5 certification of state taxes and charged and collected as other special charges are collected,  
6 with interest from the due date at a rate set by the commissioner by rule or, in the absence of  
7 a rule, at twice the most common prime rate charged by major banks in this state.

8 SECTION 11. 605.21 (2) (c) of the statutes is created to read:

9 605.21 (2) (c) If a premium due by a tribe is more than 90 days past due, the policy is  
10 suspended. No claim may be paid under the policy on any loss occurring during a period of  
11 suspension.

12 SECTION 12. 605.21 (3) of the statutes is amended to read:

13 605.21 (3) WITHDRAWAL FROM THE PROPERTY FUND. ~~Any A~~ local governmental unit may  
14 ~~terminate its insurance in the property fund,~~ by a majority vote, and upon a tribe may, by  
15 resolution of its governing body, terminate its insurance in the property fund. Upon certifying  
16 such action to the manager, the insurance in force in the fund shall terminate upon expiration  
17 of the policy unless the local governmental unit or tribe specifies an earlier date for  
18 termination. In case of removal or sale of property, the board may terminate the insurance on  
19 that property without terminating its entire insurance in the property fund.

20 SECTION 13. 605.21 (4) of the statutes is amended to read:

21 605.21 (4) INSURANCE OF PERSONAL PROPERTY. All personal property of the local  
22 governing unit or tribe is insured and premiums therefor must be paid under this section except  
23 to the extent that coverage is excluded under s. 605.02 (1) (b) or by resolution under s. 605.02  
24 (1) (a).

1           **SECTION 14.** 605.23 (1) and (2) of the statutes are amended to read:

2           **605.23 (1) PAYMENT FOR LOSSES.** The manager shall determine within a reasonable time  
3 any loss on insured property owned by a local governmental unit or tribe or for which the local  
4 governmental unit or tribe is liable and promptly certify the amount to the department of  
5 administration, which shall issue a warrant on the property fund payable to the treasurer of the  
6 local governmental unit or tribe for the amount of the loss less any applicable amounts under  
7 s. 605.03 (2) or (3).

8           **(2) APPRAISAL IN CASE OF DISAGREEMENT.** If there is disagreement between the manager  
9 and the local governmental unit or tribe as to the amount of the loss or damage to property  
10 covered by the property fund, the amount shall be determined by appraisal, upon the demand  
11 of the local governmental unit or tribe. The manager and the claimant shall each select a  
12 competent and disinterested appraiser and notify the other of the selection within 20 days of  
13 the demand. If either party fails to select an appraiser within the allotted time, the other party  
14 may request a court of record to appoint an appraiser. The appraisers shall first select a  
15 competent and disinterested umpire. If they do not agree on one within 15 days, then either  
16 party may request a judge of a court of record in the county in which the property is located  
17 to select a competent and disinterested umpire and the judge shall do so promptly. The  
18 appraisers shall then appraise the loss and damage, stating separately the actual cash value or  
19 other applicable basis of valuation and the loss or damage to each item. If they fail to agree  
20 they shall submit their differences to the umpire. An itemized award in writing of any 2 of  
21 the 3 when filed with the manager shall determine the amount of the insured value and of loss  
22 or damage. Each appraiser shall be paid by the party selecting that appraiser and other  
23 expenses of appraisal and of the umpire shall be paid by the parties equally.

24           **SECTION 15.** 605.24 (3) of the statutes is amended to read:

605.24 (3) RIGHT OVER AGAINST 3RD PERSONS. The property fund may name other persons as additional persons protected under s. 605.02, but unless it does so the fund shall have any right of recovery by subrogation or otherwise against such persons that a private insurer would have and shall not lose such right because the local governmental unit or tribe protected has after commencement of the coverage waived any right of recovery it would otherwise have had, or has thereafter contracted to assume the risk that general law would have placed elsewhere.

**(END)**



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0793/

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7JK jld  
r m not run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(in 1-7)  
by 1-18 please

PWF

property

✓

1

Gen

AN ACT ...; relating to: allowing American Indian tribes and bands to insure

2

governmental facilities under the local government property insurance fund. ✓

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations at the recommendation of the office of the commissioner of insurance (OCI). ✓

Currently, a local governmental unit (including general purpose and special purpose units of government) may insure its property in the local government property insurance fund (fund), administered by the OCI. The governing body of the governmental unit must adopt a resolution authorizing insurance of its property in the fund. With certain exceptions, a governmental unit that participates in the fund must insure all of its insurable property in the fund.

This draft allows American Indian tribes and bands in this state to insure their property in the fund under terms substantially similar to the terms that apply to local governmental units. It requires the governing body of a tribe to adopt a resolution authorizing the insurance and agreeing to abide by the rules and terms of the program and any policy issues to the tribe. It does not allow the insurance of tribal casinos or associated facilities in the fund. ✓

bill

issued



SECTION 1. 605.01 (3) of the statutes is created to read:

605.01 (3) "Tribe" means a federally recognized American Indian tribe or band in this state.

SECTION 2. 605.02 (1) of the statutes is renumbered 605.02 (1) (a) and amended to read:

605.02 (1) (a) PROPERTY OF LOCAL GOVERNMENTAL UNITS AND TRIBES. Any Except as provided in par. (b), a local governmental unit or tribe may insure in the property fund its property or, subject to sub. (2), property for which it may be liable in the event of damage or destruction. Property insured under this section by a local governmental unit or tribe may not also be insured in any other manner unless the manager certifies that additional insurance is necessary, or unless the local governmental unit or tribe by resolution, a certified copy of which is filed with the manager, decides to insure specified personal property with insurers authorized to do business in this state.

SECTION 3. 605.02 (1) (b) of the statutes is created to read:

605.02 (1) (b) A tribe may not insure a building in which the tribe conducts class II gaming, as defined in 25 USC 2703 (7), or class III gaming, as defined in 25 USC 2703 (8), or a hotel, restaurant, convention center, or other facility attached to or associated with such a building.

SECTION 4. 605.02 (2) (intro.) and (a) to (c) of the statutes are amended to read:

605.02 (2) REQUIREMENTS FOR NONOWNED PROPERTY. (intro.) The property fund may cover a building or structure specified in sub. (1) that is not owned by a local governmental unit or tribe only if all of the following conditions are met:

(a) The building or structure is listed and described as a nonowned building or structure in the local governmental unit's or tribe's statement of values.

move

Insert 2-4

in the property fund

(b) land

Subject to sub. (1) (b), the

(b) The local governmental unit or tribe<sup>✓</sup> is contractually liable in the event that the building or structure is damaged or destroyed.

(c) The building or structure is in the local governmental unit's or tribe's<sup>✓</sup> care, custody, or control.

**SECTION 5.** 605.09 of the statutes is renumbered 605.09 (1).

**SECTION 6.** 605.09 (1) (title) of the statutes is created to read:

605.09 (1) (title) PROPERTY OF LOCAL GOVERNMENTAL UNITS.

**SECTION 7.** 605.09 (2) of the statutes is created to read:

605.09 (2) PROPERTY OF TRIBES. A policy issued to a tribe under this chapter shall be suspended, and no claim may be paid under the policy on any loss occurring during the period of suspension, if the tribe pays out any money to any private insurer or incurs any indebtedness against the tribe to a private insurer for any insurance on any property of the tribe or for which the tribe may be legally liable if such insurance is available under this chapter, unless <sup>any</sup> one of the following applies:

(a) The insurance is approved by the commissioner as necessary.

(b) The insurance is on personal property that the tribe has decided, by resolution adopted by the governing body of the tribe, to insure and the tribe has notified the commissioner of its decision to insure the personal property.

(c) The insurance is on property described in s. 605.02 (1) (b).

**SECTION 8.** 605.21 (1) of the statutes is amended to read:

605.21 (1) (title) PLACING INSURANCE; LOCAL GOVERNMENTAL UNITS<sup>✓</sup>. The property fund shall insure property described in s. 605.02 for a local governmental unit<sup>✓</sup> after receipt from the clerk of the local governmental unit of a certified copy of the resolution authorizing insurance in the property fund. The clerk shall report to the manager each policy then in force upon such property, stating the property covered by the

1 policy and the dates of issue and of expiration, the amounts and rates of insurance  
2 and the premiums. Property already insured shall become insured by the property  
3 fund as existing policies expire or are canceled. Thereafter the insurance on all  
4 property described in s. 605.02 shall be provided. Premiums shall be certified by the  
5 manager to the clerk of the appropriate unit.

6 **SECTION 9.** 605.21 (1m) of the statutes is created to read:

7 605.21 (1m) PLACING INSURANCE; TRIBES. (a) The property fund shall insure  
8 property described in s. 605.02 for a tribe after receipt from the tribe of a certified  
9 copy of a resolution of the tribe's governing body that does all of the following:

10 1. Authorizes insurance in the property fund.

11 2. States that the tribe agrees to abide by this chapter and the terms of a policy  
12 under this chapter and to comply with all directives of the manager and all decisions  
13 an umpire under s. 605.23 (2), to the same extent as a local governmental unit is

14 required, and that the tribe will not raise the defense of sovereign immunity in any  
15 action in a court of competent jurisdiction to enforce this chapter, a policy under this  
16 chapter, a directive of the manager, or the decision of an umpire under s. 605.23 (2)

17 3. Designates an administrative officer of the tribe responsible for insurance  
18 under the property fund.

19 (b) The administrative officer designated in par. (a) 3. shall report to the  
20 manager each policy then in force upon such property stating the property covered

21 by the policy and the dates of issue and of expiration, the amounts and rates of  
22 insurance and the premiums. Property already insured shall become insured by the

23 property fund as existing policies expire or are canceled. Thereafter, the insurance

24 on all property described in s. 605.02 shall be provided. Premiums shall be certified

25 by the manager to the clerk of the appropriate unit administrative officer

SECTION 10. 605.21 (2) of the statutes is renumbered 605.21 (2) (a) and amended to read:

605.21 (2) (a) Upon receipt of certification of premium due, the premium shall be paid into the state treasury for the benefit of the property fund, within 60 days after the date of certification or the effective date of the policy, whichever is the later. Premiums for property insured effective at a later date shall be paid within 60 days after the effective date of each addition. *that is* *and*

(b) The amount of a premium payable by a local governmental unit that is in default shall be a special charge against the local governing unit, and be included in the next certification of state taxes and charged and collected as other special charges are collected, with interest from the due date at a rate set by the commissioner by rule or, in the absence of a rule, at twice the most common prime rate charged by major banks in this state.

SECTION 11. 605.21 (2) (c) of the statutes is created to read:

605.21 (2) (c) If a premium *that is payable* due by a tribe is more than 90 days past due, the *coverage* policy is suspended. No claim may be paid under the policy on any loss occurring during *the* period of suspension.

SECTION 12. 605.21 (3) of the statutes is amended to read:

605.21 (3) WITHDRAWAL FROM THE PROPERTY FUND. Any A local governmental unit may terminate its insurance in the property fund, by a majority vote, and upon a tribe may, by *a* resolution of its governing body, terminate its insurance in the property fund. Upon certifying such action to the manager, the insurance in force in the fund shall terminate upon expiration of the policy unless the local governmental unit or tribe specifies an earlier date for termination. In case of

Insert 5-13

Insert 5-17

tribe's coverage

1 removal or sale of property, the ~~board~~ may terminate the insurance on that property  
2 without terminating its entire insurance in the property fund.

3 SECTION 13. 605.21 (4) of the statutes is amended to read:

4 605.21 (4) INSURANCE OF PERSONAL PROPERTY. All personal property of the local  
5 ~~governing~~ unit or tribe is insured and premiums ~~therefor~~ must be paid under this  
6 section except to the extent that coverage is excluded under s. 605.02 (1) (b) or by  
7 resolution under s. 605.02 (1) (a).

8 SECTION 14. 605.23 (1) and (2) of the statutes are amended to read:

9 605.23 (1) PAYMENT FOR LOSSES. The manager shall determine within a  
10 reasonable time any loss on insured property owned by a local governmental unit or  
11 tribe or for which the local governmental unit or tribe is liable and promptly certify  
12 the amount to the department of administration, which shall issue a warrant on the  
13 property fund payable to the treasurer of the local governmental unit or tribe for the  
14 amount of the loss less any applicable amounts under s. 605.03 (2) or (3).

15 (2) APPRAISAL IN CASE OF DISAGREEMENT. If there is disagreement between the  
16 manager and the local governmental unit or tribe as to the amount of the loss or  
17 damage to property covered by the property fund, the amount shall be determined  
18 by appraisal, upon the demand of the local governmental unit or tribe. The manager  
19 and the claimant shall each select a competent and disinterested appraiser and  
20 notify the other of the selection within 20 days of the demand. If either party fails  
21 to select an appraiser within the allotted time, the other party may request a court  
22 of record to appoint an appraiser. The appraisers shall first select a competent and  
23 disinterested umpire. If they do not agree on one within 15 days, then either party  
24 may request a judge of a court of record in the county in which the property is located  
25 to select a competent and disinterested umpire and the judge shall do so promptly.

1 The appraisers shall then appraise the loss and damage, stating separately the  
2 actual cash value or other applicable basis of valuation and the loss or damage to  
3 each item. If they fail to agree they shall submit their differences to the umpire. An  
4 itemized award in writing of any 2 of the 3 when filed with the manager shall  
5 determine the amount of the insured value and of loss or damage. Each appraiser  
6 shall be paid by the party selecting that appraiser and <sup>any</sup> other expenses of appraisal  
7 and of the umpire shall be paid by the parties equally.

8 <sup>✓</sup> SECTION 15. 605.24 (3) of the statutes is amended to read:

9 605.24 (3) RIGHT OVER AGAINST 3RD PERSONS. The property fund may name other  
10 persons as additional persons protected under s. 605.02, but unless it does so the fund  
11 shall have any right of recovery by subrogation or otherwise against such persons  
12 that a private insurer would have and shall not lose such right because the <sup>✓</sup> local  
13 governmental unit or tribe <sup>✓</sup> protected has after commencement of the coverage  
14 waived any right of recovery it would otherwise have had, or has thereafter  
15 contracted to assume the risk that general law would have placed elsewhere.

16 (END)

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0793/P/ins  
PJK:.....

*rmv not run*

*anal: jlcnote*

INSERT A

This bill is explained in the PREFATORY NOTE provided by the Joint Legislative Council *in the bill*

(END OF INSERT A)

INSERT 2-14

- 1 SECTION 1. 605.02 (1) (title) of the statutes is amended to read:  
2 605.02 (1) (title) PROPERTY OF LOCAL GOVERNMENTAL UNITS AND TRIBES.

History: 1973 c. 117; 1979 c. 221; 2007 a. 170.

(END OF INSERT 2-14)

INSERT 3-19

\*\*\*\*NOTE: In order to insure nonowned property for which a local government unit or tribe may be legally liable, the property must be used for a legitimate governmental purpose. See s. 605.02 (2) (d). Could this apply to a tribe? Should the statute be amended to add "or legitimate tribal purpose"? (I don't know if a tribe is considered a government.)

- 3 SECTION 2. 605.09 of the statutes is renumbered 605.09 (1) and amended to  
4 read:  
5 605.09 (1) PROHIBITION AGAINST ACQUIRING. After a lawful vote of the a local  
6 governmental unit, or submission of a resolution under s. 605.21 (1m) by a tribe, to  
7 insure under this chapter, no such local governmental unit or tribe may pay out any  
8 money to any private insurer nor incur any indebtedness against the local  
9 governmental unit or tribe to a private insurer for any insurance on any property of  
10 the local governmental unit or tribe or for which the local governmental unit or tribe  
11 may be legally liable if such insurance is available under this chapter, unless it is  
12 approved by the commissioner as necessary ~~or~~, unless it is insurance on personal  
13 property ~~which~~ that the local governmental unit or tribe by resolution filed with the  
14 commissioner has decided to insure in insurance companies authorized to do  
15 business in this state, or, if a tribe, unless it is insurance on property described in s.  
16 605.02 (1) (b).

History: 1973 c. 117; 1975 c. 41; 1979 c. 221.

*J*

*Ins 3-19 contd*

\*\*\*\*NOTE: Would this provision apply to a tribe after "a lawful vote" also (instead of after submission of a resolution)?

1       **SECTION 3.** 605.09 (2)<sup>✓</sup> of the statutes is created to read:

2       605.09 (2) SUSPENSION OF COVERAGE FOR TRIBES. <sup>✓</sup>If a tribe that is insured under  
3       this chapter <sup>✓</sup>acquires private insurance on property of the tribe or for which the tribe  
4       may be legally liable in violation of sub. (1), <sup>✓</sup>the tribe's coverage under this chapter  
5       shall be suspended, and no claim may be paid <sup>under that coverage</sup> on any loss occurring during the period  
6       of suspension.

\*\*\*\*NOTE: I amended s. 605.09 <sup>✓</sup>differently. Is this ok? <sup>ay</sup> Is the coverage suspension  
for tribes workable? How would anyone know that the tribe had acquired other  
insurance? If the fund manager does find out, would the period of suspension start when  
the manager finds out or would the period of suspension begin retroactively when the  
other insurance commenced? It might be important to specify exactly when the  
suspension period begins, if a claim is made based on something that occurred during  
what could be a period of suspension. <sup>✓</sup>

\*\*\*\*NOTE: A suspension implies something temporary. How is a suspension under  
this subsection ended? If it doesn't end, then the coverage should be terminated instead  
of suspended. <sup>✓</sup>

(END OF INSERT 3-19)

**INSERT 5-13**

7       605.21 (2) (a) Upon receipt of certification of premium due, the premium shall  
8       be paid into the state treasury for the benefit of the property fund, <sup>✓</sup>within 60 days  
9       after the date of certification or the effective date of the policy, whichever is the later.  
10      Premiums for property insured effective at a later date shall be paid within 60 days  
11      after the effective date of each addition. <sup>✓</sup>The

12      <sup>It</sup> (b) If a premium that is payable by a local governmental unit is in default, the  
13      amount of ~~a~~ <sup>the</sup> the premium in default shall be a special charge against the local  
14      governing governmental unit, <sup>✓</sup>and shall be included in the next certification of state  
15      taxes, and shall be <sup>✓</sup>charged and collected as other special charges are collected, with





- 1 interest from the due date at a rate set by the commissioner by rule or, in the absence
- 2 of a rule, at twice the most common prime rate charged by major banks in this state.

History: 1973 c. 117, 333; 1979 c. 102, 221; 2007 a. 170.

(END OF INSERT 5-13)

INSERT 5-17

\*\*\*\*NOTE: Is a suspension under this paragraph ended if the tribe pays the overdue premium? If so, do you want to add that? ✓

(END OF INSERT 5-17)

INSERT 6-1

- 3 <sup>not</sup> local governmental unit or tribe <sup>NO</sup> ~~it~~

(END OF INSERT 6-1)

## Kahler, Pam

---

**From:** Lovell, David  
**Sent:** Thursday, January 24, 2013 10:49 AM  
**To:** Kahler, Pam  
**Cc:** Moore, David; Wicka, Richard B - OCI (Richard.Wicka@wisconsin.gov)  
**Subject:** RE: LRB-0793/P1 -- local gov't property ins. fund

Pam,

After talking with a few folks, I am revising my comments – actually, just the first bullet in response to your notes following page 4, line 9. The way you drafted it is fine, and probably preferable.

David

---

**From:** Lovell, David  
**Sent:** Wednesday, January 16, 2013 5:47 PM  
**To:** Kahler, Pam  
**Cc:** Moore, David; Wicka, Richard B - OCI (Richard.Wicka@wisconsin.gov)  
**Subject:** LRB-0793/P1 -- local gov't property ins. fund

Pam,

Thank you for this draft. I will respond to your questions. I am sending this and the draft to Richard Wicka, at OCI, so that he can offer his thoughts on the draft, your questions, and my responses, also.

In response to your note following page 3, line 12, tribes **are** governments, so it is OK to refer to governmental uses by a tribe.

In response to your note following page 4, line 3, I don't know what "a lawful vote" is, but tribes do, I know, do things by resolution to operate under other statutes (see, e.g., s. 165.92 (3m) (a) 1.), so I used that terminology. Does that work for you?

In response to your notes following page 4, line 9:

- I structured this differently for tribes than current law is structured for local governments because, while the Legislature can tell local governments what to do, it cannot do so to tribes – so I said, if a tribe takes out other insurance, this is the consequence. For this reason, I would prefer to keep the structure I used.
- I don't know how the manager would know if a tribe has taken out other insurance; how does the manager know if a local government has done so, in order to enforce current s. 605.09?
- The way I drafted it, the suspension is automatic upon the commencement of the other insurance (I think), and I considered it implied that the suspension ended when the other insurance is terminated. However, I think you are right that this could be made much more clear – something to the effect that the policy is suspended from the time that the other policy takes effect until the other policy terminates.

In response to your note following page 6, line 15, yes, and yes.

Again, thank you – and let me know if you have further questions.

David

---

David L. Lovell, Senior Analyst  
Wisconsin Legislative Council  
608-266-1537

## Kahler, Pam

---

**From:** Lovell, David  
**Sent:** Wednesday, January 16, 2013 5:47 PM  
**To:** Kahler, Pam  
**Cc:** Moore, David; Wicka, Richard B - OCI (Richard.Wicka@wisconsin.gov)  
**Subject:** LRB-0793/P1 -- local gov't property ins. fund  
**Attachments:** 13-0793\_P1.pdf

Pam,

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- I structured this differently for tribes than current law is structured for local governments because, while the Legislature can tell local governments what to do, it cannot do so to tribes – so I said, if a tribe takes out other insurance, this is the consequence. For this reason, I would prefer to keep the structure I used. *my structure does something*
- I don't know how the manager would know if a tribe has taken out other insurance; how does the manager know if a local government has done so, in order to enforce current s. 605.09?
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Again, thank you – and let me know if you have further questions.

David

---

David L. Lovell, Senior Analyst  
Wisconsin Legislative Council  
608-266-1537

## Kahler, Pam

---

**From:** Wicka, Richard B - OCI <Richard.Wicka@wisconsin.gov>  
**Sent:** Tuesday, January 29, 2013 3:12 PM  
**To:** Kahler, Pam  
**Cc:** Moore, David; Lovell, David  
**Subject:** RE: LRB-0793/P1 -- local gov't property ins. fund

Pam,

Here are my additions to the comments that David has already made.

- ✓ In response to your question at page 3, line 12, I agree with David that a tribe would fit the definition of government and the current language in 605.02 (2)(d) should be sufficient.
- ✓ In response to your question at page 4, line 3, I like David's language referring to a resolution under 605.21 (1m).

Section 7 on page 4, lines 5-9, can be deleted in whole. (I apologize David since I told you the opposite a couple of days ago). I spoke with the fund manager and the policy has priority of claim payment language that addresses this issue. If a tribe or local government gets additional insurance without notifying the fund, the fund's policy does not pay until after the other policy. So in essence the tribe or local government would be paying two premiums for single coverage and there is an economic disincentive to acquiring additional coverage. If this section is deleted, 605.09 would not need to be renumbered.

In response to your question at page 6, line 15, the suspension would end after the tribe pays past due premium. I would be fine with language along those lines in the statute or language that the fund manager shall develop procedures for reinstatement.

Otherwise the draft looks good, thank you Pam and David for your work on this. Please let me know if you have any additional questions.

Richard

Richard B. Wicka, Deputy Chief Legal Counsel  
Wisconsin Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

125 S Webster St (2nd Fl)  
Madison WI 53703-3474  
Ph: (608)261-6018 FAX: (608)264-6228

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---

**From:** Lovell, David [<mailto:David.Lovell@legis.wisconsin.gov>]  
**Sent:** Thursday, January 24, 2013 10:49 AM  
**To:** Kahler, Pam - LEGIS  
**Cc:** Moore, David - LEGIS; Wicka, Richard B - OCI  
**Subject:** RE: LRB-0793/P1 -- local gov't property ins. fund

Pam,

After talking with a few folks, I am revising my comments – actually, just the first bullet in response to your notes following page 4, line 9. The way you drafted it is fine, and probably preferable.

David

---

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**Sent:** Wednesday, January 16, 2013 5:47 PM  
**To:** Kahler, Pam  
**Cc:** Moore, David; Wicka, Richard B - OCI ([Richard.Wicka@wisconsin.gov](mailto:Richard.Wicka@wisconsin.gov))  
**Subject:** LRB-0793/P1 -- local gov't property ins. fund

Pam,

Thank you for this draft. I will respond to your questions. I am sending this and the draft to Richard Wicka, at OCI, so that he can offer his thoughts on the draft, your questions, and my responses, also.

In response to your note following page 3, line 12, tribes *are* governments, so it is OK to refer to governmental uses by a tribe.

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In response to your notes following page 4, line 9:

- I structured this differently for tribes than current law is structured for local governments because, while the Legislature can tell local governments what to do, it cannot do so to tribes – so I said, if a tribe takes out other insurance, this is the consequence. For this reason, I would prefer to keep the structure I used.
- I don't know how the manager would know if a tribe has taken out other insurance; how does the manager know if a local government has done so, in order to enforce current s. 605.09?
- The way I drafted it, the suspension is automatic upon the commencement of the other insurance (I think), and I considered it implied that the suspension ended when the other insurance is terminated. However, I think you are right that this could be made much more clear – something to the effect that the policy is suspended from the time that the other policy takes effect until the other policy terminates.

In response to your note following page 6, line 15, yes, and yes.

Again, thank you – and let me know if you have further questions.

David

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David L. Lovell, Senior Analyst  
Wisconsin Legislative Council  
608-266-1537



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0793/P2  
PJK:jld:rs

rm is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(in 1-25)  
D-note

X regenerate ↓

1 AN ACT *to renumber and amend* 605.02 (1), 605.09 and 605.21 (2); *to amend*  
2 605.02 (1) (title), 605.02 (2) (intro.), (a), (b) and (c), 605.21 (1), 605.21 (3), 605.21  
3 (4), 605.23 (1) and (2) and 605.24 (3); and *to create* 605.01 (3), 605.02 (1) (b),  
4 605.09 (2), 605.21 (1m) and 605.21 (2) (c) of the statutes; **relating to:** allowing  
5 American Indian tribes and bands to insure property under the local  
6 government property insurance fund.✓

---

***Analysis by the Legislative Reference Bureau***

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations at the recommendation of the office of the commissioner of insurance (OCI).

Currently, a local governmental unit (including general purpose and special purpose units of government) may insure its property in the local government property insurance fund (fund), administered by the OCI. The governing body of the governmental unit must adopt a resolution authorizing insurance of its property in the fund. With



certain exceptions, a governmental unit that participates in the fund must insure all of its insurable property in the fund.

This bill allows American Indian tribes and bands in this state to insure their property in the fund under terms substantially similar to the terms that apply to local governmental units. It requires the governing body of a tribe to adopt a resolution authorizing the insurance and agreeing to abide by the rules and terms of the program and any policy issued to the tribe. It does not allow the insurance of tribal casinos or associated facilities in the fund.

**SECTION 1.** 605.01 (3) of the statutes is created to read:

605.01 (3) "Tribe" means a federally recognized American Indian tribe or band in this state.

**SECTION 2.** 605.02 (1) (title) of the statutes is amended to read:

605.02 (1) (title) PROPERTY OF LOCAL GOVERNMENTAL UNITS AND TRIBES.

**SECTION 3.** 605.02 (1) of the statutes is renumbered 605.02 (1) (a) and amended to read:

605.02 (1) (a) Any Except as provided in par. (b), a local governmental unit or tribe may insure in the property fund its property or, subject to sub. (2), property for which it may be liable in the event of damage or destruction. Property insured under this section by a local governmental unit or tribe may not also be insured in any other manner unless the manager certifies that additional insurance is necessary, or unless the local governmental unit or tribe by resolution, a certified copy of which is filed with the manager, decides to insure specified personal property with insurers authorized to do business in this state.

**SECTION 4.** 605.02 (1) (b) of the statutes is created to read:

605.02 (1) (b) A tribe may not insure in the property fund a building in which the tribe conducts class II gaming, as defined in 25 USC 2703 (7), or class III gaming, as defined in 25 USC 2703 (8), or a hotel, restaurant, convention center, or other facility attached to or associated with such a building.

1           **SECTION 5.** 605.02 (2) (intro.), (a), (b) and (c) of the statutes are amended to  
2 read:

3           605.02 (2) REQUIREMENTS FOR NONOWNED PROPERTY. (intro.) The Subject to sub.  
4 (1) (b), the property fund may cover a building or structure specified in sub. (1) (a)  
5 that is not owned by a local governmental unit or tribe only if all of the following  
6 conditions are met:

7           (a) The building or structure is listed and described as a nonowned building or  
8 structure in the local governmental unit's or tribe's statement of values.

9           (b) The local governmental unit or tribe is contractually liable in the event that  
10 the building or structure is damaged or destroyed.

11           (c) The building or structure is in the local governmental unit's or tribe's care,  
12 custody, or control.

\*\*\*\*NOTE: In order to insure nonowned property for which a local government unit or tribe may be legally liable, the property must be used for a legitimate governmental purpose. See s. 605.02 (2) (d). Could this apply to a tribe? Should the statute be amended to add "or legitimate tribal purpose"? (I don't know if a tribe is considered a government.)

13           **SECTION 6.** 605.09 of the statutes is renumbered 605.09 (1) and amended to  
14 read:

15           605.09 (1) PROHIBITION AGAINST ACQUIRING. After ~~a~~ <sup>strike</sup> lawful vote of ~~the~~ <sup>plain</sup> a local  
16 governmental unit, or submission of a resolution under s. 605.21 (1m) by a tribe, to  
17 insure under this chapter, no such local governmental unit or tribe may pay out any  
18 money to any private insurer nor incur any indebtedness against the local  
19 governmental unit or tribe to a private insurer for any insurance on any property of  
20 the local governmental unit or tribe or for which the local governmental unit or tribe  
21 may be legally liable if such insurance is available under this chapter, unless it is  
22 approved by the commissioner as necessary ~~or~~, unless it is insurance on personal  
23 property ~~which that~~ the local governmental unit or tribe by resolution filed with the

LPS - change component

adoption of a resolution under s. 605.21 (1m)

1 commissioner has decided to insure in insurance companies authorized to do  
2 business in this state, or, if a tribe, unless it is insurance on property described in s.  
3 605.02 (1) (b).

→ \*\*\*\*NOTE: Would this provision apply to a tribe after "a lawful vote" also (instead of after submission of a resolution)?

4 **SECTION 7.** 605.09 (2) of the statutes is created to read:

5 **605.09 (2) SUSPENSION OF COVERAGE FOR TRIBES.** If a tribe that is insured under  
6 this chapter acquires private insurance on property of the tribe or for which the tribe  
7 may be legally liable in violation of sub. (1), the tribe's coverage under this chapter  
8 shall be suspended, and no claim may be paid under that coverage on any loss  
9 occurring during the period of suspension. Insert 4-9

→ \*\*\*\*NOTE: I amended s. 605.09 differently. Is this okay? Is the coverage suspension for tribes workable? How would anyone know that the tribe had acquired other insurance? If the fund manager does find out, would the period of suspension start when the manager finds out or would the period of suspension begin retroactively when the other insurance commenced? It might be important to specify exactly when the suspension period begins, if a claim is made based on something that occurred during what could be a period of suspension.

\*\*\*\*NOTE: A suspension implies something temporary. How is a suspension under this subsection ended? If it doesn't end, then the coverage should be terminated instead of suspended.

10 **SECTION 8.** 605.21 (1) of the statutes is amended to read:

11 **605.21 (1) PLACING INSURANCE; LOCAL GOVERNMENTAL UNITS.** The property fund  
12 shall insure property described in s. 605.02 for a local governmental unit after receipt  
13 from the clerk of the local governmental unit of a certified copy of the resolution  
14 authorizing insurance in the property fund. The clerk shall report to the manager  
15 each policy then in force upon such property, stating the property covered by the  
16 policy and the dates of issue and of expiration, the amounts and rates of insurance,  
17 and the premiums. Property already insured shall become insured by the property  
18 fund as existing policies expire or are canceled. Thereafter the insurance on all

1 property described in s. 605.02 shall be provided. Premiums shall be certified by the  
2 manager to the clerk of the appropriate unit.

3 **SECTION 9.** 605.21 (1m) of the statutes is created to read:

4 **605.21 (1m) PLACING INSURANCE; TRIBES.** (a) The property fund shall insure  
5 property described in s. 605.02 for a tribe after receipt from the tribe of a certified  
6 copy of a resolution of the tribe's governing body that does all of the following:

7 1. Authorizes insurance in the property fund.

8 2. States that the tribe agrees to abide by this chapter and the terms of any  
9 policy issued under this chapter and to comply with all directives of the manager and  
10 all final decisions under s. 605.23 (2), to the same extent as a local governmental unit,  
11 and that the tribe will not raise the defense of sovereign immunity in any action in  
12 a court of competent jurisdiction to enforce this chapter, a policy issued under this  
13 chapter, a directive of the manager, or a final decision under s. 605.23 (2).

14 3. Designates an administrative officer of the tribe responsible for insurance  
15 under the property fund.

16 (b) The administrative officer designated in par. (a) 3. shall report to the  
17 manager each policy then in force upon the tribe's property described in s. 605.02,  
18 stating the property covered by the policy and the dates of issue and of expiration,  
19 the amounts and rates of insurance, and the premiums. Property already insured  
20 shall become insured by the property fund as existing policies expire or are canceled.  
21 Thereafter, the insurance on all property described in s. 605.02 shall be provided.  
22 Premiums shall be certified by the manager to the administrative officer.

23 **SECTION 10.** 605.21 (2) of the statutes is renumbered 605.21 (2) (a) and  
24 amended to read:

605.21 (2) (a) Upon receipt of certification of premium due, the premium shall be paid into the state treasury for the benefit of the property fund, within 60 days after the date of certification or the effective date of the policy, whichever is the later. Premiums for property insured effective at a later date shall be paid within 60 days after the effective date of each addition. The

(b) If a premium that is payable by a local governmental unit is in default, the amount of -a- the premium in default shall be a special charge against the local governing governmental unit, and shall be included in the next certification of state taxes, and shall be charged and collected as other special charges are collected, with interest from the due date at a rate set by the commissioner by rule or, in the absence of a rule, at twice the most common prime rate charged by major banks in this state.

SECTION 11. 605.21 (2) (c) of the statutes is created to read:

605.21 (2) (c) If a premium that is payable by a tribe is more than 90 days past due, the tribe's coverage is suspended. No claim may be paid under the coverage on any loss occurring during the period of suspension. Insert 6-15 ✓

\*\*\*\*NOTE: Is a suspension under this paragraph ended if the tribe pays the overdue premium? If so, do you want to add that?

SECTION 12. 605.21 (3) of the statutes is amended to read:

605.21 (3) WITHDRAWAL FROM THE PROPERTY FUND. ~~Any~~ A local governmental unit may ~~terminate its insurance in the property fund~~, by a majority vote, and ~~upon~~ a tribe may, by a resolution of its governing body, terminate its insurance in the property fund. Upon certifying such action to the manager, the insurance in force in the fund shall terminate upon expiration of the policy unless the local governmental unit or tribe specifies an earlier date for termination. In case of removal or sale of property, the ~~board~~ local governmental unit or tribe may terminate

1 the insurance on that property without terminating its entire insurance in the  
2 property fund.

3 **SECTION 13.** 605.21 (4) of the statutes is amended to read:

4 605.21 (4) INSURANCE OF PERSONAL PROPERTY. All personal property of the local  
5 governing governmental unit or tribe is insured and premiums ~~therefor~~ for coverage  
6 must be paid under this section except to the extent that coverage is excluded under  
7 s. 605.02 (1) (b) or by resolution under s. 605.02 (1) (a).

8 **SECTION 14.** 605.23 (1) and (2) of the statutes are amended to read:

9 605.23 (1) PAYMENT FOR LOSSES. The manager shall determine within a  
10 reasonable time any loss on insured property owned by a local governmental unit or  
11 tribe or for which the local governmental unit or tribe is liable and promptly certify  
12 the amount to the department of administration, which shall issue a warrant on the  
13 property fund payable to the treasurer of the local governmental unit or tribe for the  
14 amount of the loss less any applicable amounts under s. 605.03 (2) or (3).

15 (2) APPRAISAL IN CASE OF DISAGREEMENT. If there is disagreement between the  
16 manager and the local governmental unit or tribe as to the amount of the loss or  
17 damage to property covered by the property fund, the amount shall be determined  
18 by appraisal, upon the demand of the local governmental unit or tribe. The manager  
19 and the claimant shall each select a competent and disinterested appraiser and  
20 notify the other of the selection within 20 days of the demand. If either party fails  
21 to select an appraiser within the allotted time, the other party may request a court  
22 of record to appoint an appraiser. The appraisers shall first select a competent and  
23 disinterested umpire. If they do not agree on one within 15 days, then either party  
24 may request a judge of a court of record in the county in which the property is located  
25 to select a competent and disinterested umpire and the judge shall do so promptly.

1 The appraisers shall then appraise the loss and damage, stating separately the  
2 actual cash value or other applicable basis of valuation and the loss or damage to  
3 each item. If they fail to agree they shall submit their differences to the umpire. An  
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8 **SECTION 15.** 605.24 (3) of the statutes is amended to read:

9 605.24 (3) RIGHT OVER AGAINST 3RD PERSONS. The property fund may name other  
10 persons as additional persons protected under s. 605.02, but unless it does so the fund  
11 shall have any right of recovery by subrogation or otherwise against such persons  
12 that a private insurer would have and shall not lose such right because the local  
13 governmental unit or tribe protected has after commencement of the coverage  
14 waived any right of recovery it would otherwise have had, or has thereafter  
15 contracted to assume the risk that general law would have placed elsewhere.

16 (END)

D-Note

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0793/P2ins  
PJK:.....

INSERT 4-9

1 ~~A period of suspension under this subsection begins on the date on which~~  
2 ~~coverage under the private insurance goes into effect and ends on the date on which~~  
3 ~~that coverage is terminated.~~

(END OF INSERT 4-9)

INSERT 6-15

4 ~~A period of suspension under this paragraph~~ <sup>not</sup> ~~begins on the 91st day after the~~ ✓  
5 ~~day on which an unpaid premium is due and ends on the day on which all overdue~~ <sup>was</sup>  
6 ~~premium is paid.~~ ✓

(END OF INSERT 6-15)



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0793/P2dn

PJK:.....

date

jld

David:

In this version of the draft, I added language specifying when the suspension periods begin and end in ss. 605.09 (2) and 605.21 (2) (c). Let me know if ~~they~~ need any changes.

I also modified s. 605.09 (1) somewhat to make what local governmental units and tribes do more similar. I assumed that, since each must submit a resolution, each must adopt it. I don't think that it changes current law with respect to a local governmental unit, since "adoption" of the resolution is really the same thing as a "lawful vote."

Finally, I did not add an additional analysis because I thought your prefatory note covered the topic generally. All an analysis would do is add some details, but I thought that repeating the general information already included in your note would be too repetitive. Okay?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0793/P2dn  
PJK:jld:jf

February 1, 2013

David:

In this version of the draft, I added language specifying when the suspension period begins and ends in s. 605.21 (2) (c). Let me know if it needs any changes.

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Pamela J. Kahler  
Senior Legislative Attorney  
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State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0793/PZ  
PJK:jld:ff

2013 BILL

rm5

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

this  
afternoon, please  
1:00?  
(no changes)  
x

per

Regen

- 1 AN ACT *to renumber and amend* 605.02 (1) and 605.21 (2); *to amend* 605.02  
2 (1) (title), 605.02 (2) (intro.), (a), (b) and (c), 605.09, 605.21 (1), 605.21 (3), 605.21  
3 (4), 605.23 (1) and (2) and 605.24 (3); and *to create* 605.01 (3), 605.02 (1) (b),  
4 605.21 (1m) and 605.21 (2) (c) of the statutes; **relating to:** allowing American  
5 Indian tribes and bands to insure property under the local government property  
6 insurance fund.

---

***Analysis by the Legislative Reference Bureau***

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations at the recommendation of the office of the commissioner of insurance (OCI).

Currently, a local governmental unit (including general purpose and special purpose units of government) may insure its property in the local government property insurance fund (fund), administered by the OCI. The governing body of the governmental unit must adopt a resolution authorizing insurance of its property in the fund. With

certain exceptions, a governmental unit that participates in the fund must insure all of its insurable property in the fund.

This bill allows American Indian tribes and bands in this state to insure their property in the fund under terms substantially similar to the terms that apply to local governmental units. It requires the governing body of a tribe to adopt a resolution authorizing the insurance and agreeing to abide by the rules and terms of the program and any policy issued to the tribe. It does not allow the insurance of tribal casinos or associated facilities in the fund.

**SECTION 1.** 605.01 (3) of the statutes is created to read:

605.01 (3) "Tribe" means a federally recognized American Indian tribe or band in this state.

**SECTION 2.** 605.02 (1) (title) of the statutes is amended to read:

605.02 (1) (title) PROPERTY OF LOCAL GOVERNMENTAL UNITS AND TRIBES.

**SECTION 3.** 605.02 (1) of the statutes is renumbered 605.02 (1) (a) and amended to read:

605.02 (1) (a) ~~Any~~ Except as provided in par. (b), a local governmental unit or tribe may insure in the property fund its property or, subject to sub. (2), property for which it may be liable in the event of damage or destruction. Property insured under this section by a local governmental unit or tribe may not also be insured in any other manner unless the manager certifies that additional insurance is necessary, or unless the local governmental unit or tribe by resolution, a certified copy of which is filed with the manager, decides to insure specified personal property with insurers authorized to do business in this state.

**SECTION 4.** 605.02 (1) (b) of the statutes is created to read:

605.02 (1) (b) A tribe may not insure in the property fund a building in which the tribe conducts class II gaming, as defined in 25 USC 2703 (7), or class III gaming, as defined in 25 USC 2703 (8), or a hotel, restaurant, convention center, or other facility attached to or associated with such a building.

1           **SECTION 5.** 605.02 (2) (intro.), (a), (b) and (c) of the statutes are amended to  
2 read:

3           **605.02 (2) REQUIREMENTS FOR NONOWNED PROPERTY.** (intro.) ~~The~~ Subject to sub.  
4 (1) (b), the property fund may cover a building or structure specified in sub. (1) (a)  
5 that is not owned by a local governmental unit or tribe only if all of the following  
6 conditions are met:

7           (a) The building or structure is listed and described as a nonowned building or  
8 structure in the local governmental unit's or tribe's statement of values.

9           (b) The local governmental unit or tribe is contractually liable in the event that  
10 the building or structure is damaged or destroyed.

11           (c) The building or structure is in the local governmental unit's or tribe's care,  
12 custody, or control.

13           **SECTION 6.** 605.09 of the statutes is amended to read:

14           **605.09 (1)** After ~~a lawful vote of the~~ adoption of a resolution under s. 605.21  
15 (1) by a local governmental unit, or under s. 605.21 (1m) by a tribe, to insure under  
16 this chapter, no such local governmental unit or tribe may pay out any money to any  
17 private insurer nor incur any indebtedness against the local governmental unit or  
18 tribe to a private insurer for any insurance on any property of the local governmental  
19 unit or tribe or for which the local governmental unit or tribe may be legally liable  
20 if such insurance is available under this chapter, unless it is approved by the  
21 commissioner as necessary ~~or,~~ unless it is insurance on personal property ~~which that~~  
22 the local governmental unit or tribe by resolution filed with the commissioner has  
23 decided to insure in insurance companies authorized to do business in this state, or,  
24 if a tribe, unless it is insurance on property described in s. 605.02 (1) (b).

25           **SECTION 7.** 605.21 (1) of the statutes is amended to read:

1           605.21 (1) ~~PLACING INSURANCE; LOCAL GOVERNMENTAL UNITS.~~ The property fund  
2 shall insure property described in s. 605.02 for a local governmental unit after receipt  
3 from the clerk of the local governmental unit of a certified copy of the resolution  
4 authorizing insurance in the property fund. The clerk shall report to the manager  
5 each policy then in force upon such property, stating the property covered by the  
6 policy and the dates of issue and of expiration, the amounts and rates of insurance,  
7 and the premiums. Property already insured shall become insured by the property  
8 fund as existing policies expire or are canceled. Thereafter the insurance on all  
9 property described in s. 605.02 shall be provided. Premiums shall be certified by the  
10 manager to the clerk of the appropriate unit.

11           **SECTION 8.** 605.21 (1m) of the statutes is created to read:

12           605.21 (1m) ~~PLACING INSURANCE; TRIBES.~~ (a) The property fund shall insure  
13 property described in s. 605.02 for a tribe after receipt from the tribe of a certified  
14 copy of a resolution of the tribe's governing body that does all of the following:

15           1. Authorizes insurance in the property fund.  
16           2. States that the tribe agrees to abide by this chapter and the terms of any  
17 policy issued under this chapter and to comply with all directives of the manager and  
18 all final decisions under s. 605.23 (2), to the same extent as a local governmental unit,  
19 and that the tribe will not raise the defense of sovereign immunity in any action in  
20 a court of competent jurisdiction to enforce this chapter, a policy issued under this  
21 chapter, a directive of the manager, or a final decision under s. 605.23 (2).

22           3. Designates an administrative officer of the tribe responsible for insurance  
23 under the property fund.

24           (b) The administrative officer designated in par. (a) 3. shall report to the  
25 manager each policy then in force upon the tribe's property described in s. 605.02,

1 stating the property covered by the policy and the dates of issue and of expiration,  
2 the amounts and rates of insurance, and the premiums. Property already insured  
3 shall become insured by the property fund as existing policies expire or are canceled.  
4 Thereafter, the insurance on all property described in s. 605.02 shall be provided.  
5 Premiums shall be certified by the manager to the administrative officer.

6 **SECTION 9.** 605.21 (2) of the statutes is renumbered 605.21 (2) (a) and amended  
7 to read:

8 605.21 (2) (a) Upon receipt of certification of premium due, the premium shall  
9 be paid into the state treasury for the benefit of the property fund, within 60 days  
10 after the date of certification or the effective date of the policy, whichever is the later.  
11 Premiums for property insured effective at a later date shall be paid within 60 days  
12 after the effective date of each addition. The

13 (b) If a premium that is payable by a local governmental unit is in default, the  
14 amount of -a- the premium in default shall be a special charge against the local  
15 governing governmental unit, and shall be included in the next certification of state  
16 taxes, and shall be charged and collected as other special charges are collected, with  
17 interest from the due date at a rate set by the commissioner by rule or, in the absence  
18 of a rule, at twice the most common prime rate charged by major banks in this state.

19 **SECTION 10.** 605.21 (2) (c) of the statutes is created to read:

20 605.21 (2) (c) If a premium that is payable by a tribe is more than 90 days past  
21 due, the tribe's coverage is suspended. No claim may be paid under the coverage on  
22 any loss occurring during the period of suspension. A period of suspension under this  
23 paragraph begins on the 91st day after the day on which an unpaid premium was due  
24 and ends on the day on which all overdue premium is paid.

25 **SECTION 11.** 605.21 (3) of the statutes is amended to read:

1           605.21 (3) WITHDRAWAL FROM THE PROPERTY FUND. ~~Any A~~ local governmental  
2 unit may ~~terminate its insurance in the property fund~~, by a majority vote, and ~~upon~~  
3 a tribe may, by a resolution of its governing body, terminate its insurance in the  
4 property fund. Upon certifying such action to the manager, the insurance in force  
5 in the fund shall terminate upon expiration of the policy unless the local  
6 governmental unit or tribe specifies an earlier date for termination. In case of  
7 removal or sale of property, the ~~board~~ local governmental unit or tribe may terminate  
8 the insurance on that property without terminating its entire insurance in the  
9 property fund.

10           **SECTION 12.** 605.21 (4) of the statutes is amended to read:

11           605.21 (4) INSURANCE OF PERSONAL PROPERTY. All personal property of the local  
12 governing governmental unit or tribe is insured and premiums ~~therefor~~ for coverage  
13 must be paid under this section except to the extent that coverage is excluded under  
14 s. 605.02 (1) (b) or by resolution under s. 605.02 (1) (a).

15           **SECTION 13.** 605.23 (1) and (2) of the statutes are amended to read:

16           605.23 (1) PAYMENT FOR LOSSES. The manager shall determine within a  
17 reasonable time any loss on insured property owned by a local governmental unit or  
18 tribe or for which the local governmental unit or tribe is liable and promptly certify  
19 the amount to the department of administration, which shall issue a warrant on the  
20 property fund payable to the treasurer of the local governmental unit or tribe for the  
21 amount of the loss less any applicable amounts under s. 605.03 (2) or (3).

22           (2) APPRAISAL IN CASE OF DISAGREEMENT. If there is disagreement between the  
23 manager and the local governmental unit or tribe as to the amount of the loss or  
24 damage to property covered by the property fund, the amount shall be determined  
25 by appraisal, upon the demand of the local governmental unit or tribe. The manager



1 and the claimant shall each select a competent and disinterested appraiser and  
2 notify the other of the selection within 20 days of the demand. If either party fails  
3 to select an appraiser within the allotted time, the other party may request a court  
4 of record to appoint an appraiser. The appraisers shall first select a competent and  
5 disinterested umpire. If they do not agree on one within 15 days, then either party  
6 may request a judge of a court of record in the county in which the property is located  
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8 The appraisers shall then appraise the loss and damage, stating separately the  
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10 each item. If they fail to agree they shall submit their differences to the umpire. An  
11 itemized award in writing of any 2 of the 3 when filed with the manager shall  
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13 shall be paid by the party selecting that appraiser and any other expenses of  
14 appraisal and of the umpire shall be paid by the parties equally.

15 **SECTION 14.** 605.24 (3) of the statutes is amended to read:

16 605.24 (3) RIGHT OVER AGAINST 3RD PERSONS. The property fund may name other  
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21 waived any right of recovery it would otherwise have had, or has thereafter  
22 contracted to assume the risk that general law would have placed elsewhere.

23 (END)